

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRON LAMAR HEREFORD,

CIVIL CASE NO. 04-40293

Petitioner,

v.

HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

MILLICENT WARREN,

Respondent.

_____ /

**ORDER ACCEPTING AND ADOPTING THE MAGISTRATE'S
REPORT AND RECOMMENDATION**

This is habeas corpus action, pursuant to 28 U.S.C. § 2254, in which Petitioner challenges his state court conviction for armed robbery. On April 26, 2006, Petitioner filed a motion for summary judgment on the issue of whether he was denied his Sixth Amendment right to counsel. The matter was referred to Magistrate Judge R. Steven Whalen for a report and recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B).

Now before the Court are Petitioner's motion for summary judgment¹ and the report and recommendation of Magistrate Judge Whalen, filed on February 21, 2007. The magistrate judge recommends that Petitioner's motion for summary judgment be granted, and that a conditional writ of habeas corpus be granted. He further recommends that if a date for a new trial is not scheduled within 120 days, Petitioner be unconditionally released. Respondent filed objections on March 1, 2007. Petitioner did not file objections or a response.

The Court's standard of review for a magistrate judge's report and recommendation depends

¹The Court notes that, despite being required to do so, Respondent failed to file an answer to Petitioner's motion for summary judgment. See E.D. Mich. L.R. 7.1(b), (d)(1)(B).

upon whether a party files objections. If a party does not object to the report and recommendation, the Court does not need to conduct a review by any standard. *See Lardie v. Birkett*, 221 F. Supp. 2d 806, 807 (E.D. Mich. 2002) (Gadola, J.). If a party objects to portions of the report and recommendation, the Court reviews those portions de novo. *Lardie*, 221 F. Supp. 2d at 807. The Federal Rules of Civil Procedure dictate this standard of review in Rule 72(b), which states, in relevant part, that

[t]he district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b). Here, because Respondent filed objections, this Court reviews de novo those portions to which an objection has been made. *See Lardie*, 221 F. Supp. 2d at 807.

De novo review in these circumstances requires at least a review of the evidence before the magistrate judge; the Court may not act solely on the basis of a magistrate judge's report and recommendation. *See* 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); *see also Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court may supplement the record by entertaining additional evidence, but is not required to do so. 12 Wright, Federal Practice § 3070.2. After reviewing the evidence, the Court is free to accept, reject, or modify the findings or recommendations of the magistrate judge. *See Lardie*, 221 F. Supp. 2d at 807. If the Court accepts a report and recommendation, the Court is not required to state with specificity what it reviewed; it is sufficient for the Court to state that it engaged in a de novo review of the record and adopts the report and recommendation. *See id.*; 12 Wright, Federal Practice § 3070.2.

The Court has reviewed the Petitioner's motion for summary judgment, the magistrate judge's report and recommendation, Respondent's objections, and all other applicable filings. Having conducted this review under the *de novo* standard as detailed above, the Court concludes that Magistrate Judge Whalen's factual conclusions are correct and his legal reasoning sound.

ACCORDINGLY, IT IS HEREBY ORDERED that the February 21, 2007 Report and Recommendation is **ACCEPTED** and **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED Petitioner's Motion for Summary Judgment [docket entry # 34] is **GRANTED**.

IT IS FURTHER ORDERED that a **CONDITIONAL Writ of habeas corpus is GRANTED**; if a schedule is not set within 120 days for a new trial, Petitioner shall be unconditionally released.

SO ORDERED.

Dated: March 30, 2007

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on April 3, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Mark N. Awada; Brian O. Neill, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: _____.

s/Ruth A. Brissaud
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